

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUN LI,	:	
	:	
Plaintiff,	:	
	:	C.A. No. 06-596-KAJ
v.	:	
	:	
MICHAEL CHERTOFF, Secretary of the	:	
Department of Homeland Security, EMILIO	:	
T. GONZALEZ, Director of U.S.	:	
Citizenship & Immigration Services	:	
(USCIS); PAUL E. NOVAK, JR., Vermont	:	
Service Center Director, U.S. Citizenship &	:	
Immigration Services; ROBERT S.	:	
MUELLER, Director of Federal Bureau of	:	
Investigation,	:	
	:	
Defendants.	:	

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

COLM F. CONNOLLY
United States Attorney

By: Seth M. Beausang (I.D. No. #4071)
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Dated: December 11, 2006.

1. On September 26, 2006, Plaintiff Jun Li appeared pro se and filed the present action seeking a writ of mandamus to compel Defendants¹ to “properly adjudicate Plaintiff’s [I-485] application,” “provide the Plaintiff with a Notice of Approval” of that application,” and asking the Court to grant such other relief “as justice may require.” (Compl. ¶ 20.)

2. On November 18, 2006, after approving Plaintiff’s I-485 petition, USCIS mailed Plaintiff a Form I-551 (also called a “green card”). (See Ex. A attached hereto (showing that a green card was mailed regarding Receipt # EAC0409753102; compare Compl. Ex. 8 showing Plaintiff’s I-485 application has the same Receipt #).)

3. Plaintiff’s Complaint should therefore be dismissed for lack of subject matter jurisdiction. Because Plaintiff has obtained the relief he seeks, Plaintiff’s Complaint should be dismissed as moot. See, e.g., *Shi v. Chertoff*, No. 06-CV-0470-CVE-FHM, 2006 WL 3253107, at *1 (N.D. Okla. Nov. 8, 2006) (“Plaintiff filed her I-485 and applied for permanent residence on October 2, 2002. She filed this action on September 11, 2006 on the ground that defendants improperly delayed the processing of her application. However, the United States Citizenship and Immigration Services (“CIS”) has approved her application. See Dkt. # 13, Ex. A. Since there is no further substantive relief sought by plaintiff, this action is moot, and the Court dismisses the action for lack of subject matter jurisdiction.”).

4. Plaintiff’s Complaint should also be dismissed for lack of subject matter jurisdiction because “[t]he party asserting jurisdiction bears the burden of showing the action is properly before the federal court,” *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 219 (3d Cir.

¹The Defendants are Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzalez, Director of U.S. Citizenship & Immigration Services (“USCIS”); Paul E. Novak, Jr., Vermont Service Center Director, USCIS; and Robert S. Mueller, Director of Federal Bureau of Investigation.

2005), and the possible jurisdictional bases that Plaintiff cites, 28 U.S.C. §§ 1331, 1361, and 2201, and 5 U.S.C. § 701, do not apply. *See, e.g., Chaudry v. Chertoff*, No. 06-1303 (PAM/JSM), 2006 WL 2670051, at *3 (D. Minn. Sept. 18, 2006); *Zahani v. Neufeld*, No. 6:05 CV 1857 ORL 18J, 2006 WL 2246211, at *3 (M.D. Fla. June 26, 2006); *Deen v. Chertoff*, 05-CV-1341 (DMC), 2006 WL 319297, at *2-3 (D.N.J. Feb. 10, 2006); *Mustafa v. Pasquerell*, No. SA05CA-658-XR, 2006 WL 488399, at *5 (W.D. Tex. Jan. 10, 2006).

5. Even if Plaintiff's Complaint were not dismissed for lack of jurisdiction, the Complaint should still be dismissed for failure to state a claim. Plaintiff cannot show a "clear and undisputable right" to have his I-485 Application approved because approval of that application is left up to the Attorney General's discretion. *See, e.g., Saleh v. Ridge*, 367 F. Supp. 2d 508, 514 n.4 (S.D.N.Y. 2005). Moreover, Plaintiff has no right to have his I-485 Application approved until his FBI background check is completed. *See, e.g., Jabr v. Chertoff*, No. 4:06CV00543 RWS, 2006 WL 3392504, at *2 (E.D. Mo. Nov. 21, 2006) ("Background checks must be completed before a decision can be made and Plaintiffs do not have a right to forego the required background checks."). Furthermore, Plaintiff's application was delayed approximately seventeen months since he submitted his fingerprints on April, 20, 2005, and as a matter of law a seventeen-month delay is not unreasonable. *See, e.g., Chaudry*, 2006 WL 2670051, at *3 (finding seventeen-month delay not unreasonable, "especially in light of the fact that the Complaint alleges no particular inauspicious motives or unscrupulous actions by Defendants"); *Zahani*, 2006 WL 2246211, at *3 (finding a three-year delay not unreasonable because "Courts have routinely found delays caused by FBI background checks to be justifiable delays"); *Alkenani v. Barrows*, 356 F. Supp. 2d 652, 657 (N.D. Tex. 2005) (finding fifteen-month delay to

be reasonable due to the pending FBI background check; noting that the immigration service does not “have authority to expedite the FBI investigation or give petitioner priority over background checks requested by other agencies”; further noting that such delays are inevitable and becoming more frequent in the post-911 world).

6. For the foregoing reasons, the Government respectfully requests that the Court dismiss Plaintiff’s Complaint.

DATED: December 11, 2006.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Seth M. Beausang, hereby attest under penalty of perjury that on this 11th day of December, 2006, I caused two copies of Defendants Motion to Dismiss, Memorandum of Points and Authorities in Support Thereof and Proposed Order to be served on the Plaintiff by First Class Mail at the following address:

Jun Li
18 Marvin Drive
Apartment C-3
Newark, DE 19713
(302)737-5313
PRO SE

/s/ Seth M. Beausang
Seth M. Beausang (DE I.D. No. 4071)